

ALTERNATIVE DISPUTE RESOLUTION
EFFECTIVE NEGOTIATION AGAINST MORE SENIOR ADVERSARIES
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Know Your Mediator

Court appointed versus choose your own

- No requirement to use the court appointed mediator
- You can agree with opposing counsel on another mediator

Considerations in choosing a mediator

- Which side of the v did the mediator practice?
- What subject matter experience does the mediator have?
- What is the mediation style of the mediator:
 - Trial – Evaluates your case, makes recommendations
 - Facilitator in chief - seeks common ground, validation of client feelings
 - Commando – The messenger (mainly caucus)
- Should you trust/use the mediator? Ask friends/colleagues

Know Your Case

Prepare as if it's a summary judgment motion

- Creates a Roadmap of your case
- Shows you the strengths and weaknesses of the case

Know your facts

Know the law

Use your mediation statement wisely

- Tell a compelling story in mediation statement
- Include relevant pictures and documents

Sharing is sometimes a good thing

- Share mediation statement where appropriate

Know the Game

Have a mediation strategy

- Set goals, but remember they may change if new information is revealed

Decision makers with authority must be present!!!

Prepare your client

- Mediation's limits
- The Client's Bottom Line

The Bottom Line

- Should you share it with mediator?
 - Depends on your level of trust with the mediator
 - Sharing can push the mediation towards the bottom line rather than a better outcome

Don't be bullied into a settlement

- Stand your ground
- Don't allow the mediator or opposing counsel to scare you into settlement
- Know when to walk away or when to stay the day
- Take it or lose it is a common tactic
- Listen to the mediator's observations, but remember she/he is not the judge or jury
- Prepare for the B word
- Show your willingness to try the case, even if you don't really want to
- Your actions in mediation, as well as during litigation, can establish a pattern. Be careful of your reputation and be aware of your adversaries.